

**ASSEMBLY BILL**

**No. 1395**

---

---

**Introduced by Assembly Member Salas**

February 27, 2015

---

---

An act to amend Section 17539.1 of the Government Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1395, as introduced, Salas. Unfair business practices: contests and sweepstakes.

Existing law generally regulates false advertising and specifically prohibits certain unfair acts or practices undertaken by, or omissions of, a person in the operation of a contest or sweepstakes, including, among others, misrepresenting the number of participants in a contest or sweepstakes or representing, directly or by implication, that any tie breaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes except as specified.

This bill would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17539.1 of the Business and Professions
- 2 Code is amended to read:
- 3 17539.1. (a) The following unfair acts or practices undertaken
- 4 by, or omissions of, any person in the operation of any contest or
- 5 sweepstakes are prohibited:

1 (1) Failing to clearly and conspicuously disclose, at the time of  
2 the initial contest solicitation, at the time of each precontest  
3 promotional solicitation and each time the payment of money is  
4 required to become or to remain a contestant, the total number of  
5 contestants anticipated based on prior experience and the  
6 percentages of contestants correctly solving each puzzle used in  
7 the three most recently completed contests conducted by the person.  
8 If the person has not operated or promoted three contests he or she  
9 shall disclose for each prior contest if any, the information required  
10 by this section.

11 (2) Failing to promptly send to each member of the public upon  
12 his or her request, the actual number and percentage of contestants  
13 correctly solving each puzzle or game in the contest most recently  
14 completed.

15 (3) Misrepresenting in any manner the odds of winning any  
16 prize.

17 (4) Misrepresenting in any manner, the rules, terms, or  
18 conditions of participation in a contest.

19 (5) Failing to clearly and conspicuously disclose with all contest  
20 puzzles and games and with all promotional puzzles and games  
21 all of the following:

22 (A) The maximum number of puzzles or games that may be  
23 necessary to complete the contest and determine winners.

24 (B) The maximum amount of money, including the maximum  
25 cost of any postage and handling fees, that a participant may be  
26 asked to pay to win each of the contest prizes then offered.

27 (C) That future puzzles or games, if any, or tie breakers, if any,  
28 will be significantly more difficult than the initial puzzle.

29 (D) The date or dates on or before which the contest will  
30 terminate and upon which all prizes will be awarded.

31 (E) The method of determining prizewinners if a tie remains  
32 after the last tie breaker puzzle is completed.

33 (F) All rules, regulations, terms, and conditions of the contest.

34 (6) Failing to clearly and conspicuously disclose the exact nature  
35 and approximate value of the prizes when offered.

36 (7) Failing to award and distribute all prizes of the value and  
37 type represented.

38 (8) Representing directly or by implication that the number of  
39 participants has been significantly limited, or that any particular  
40 person has been selected to win a prize unless ~~such~~ *that* is the fact.

1 (9) Representing directly or by implication that any particular  
2 person has won any money, prize, thing, or other value in a contest  
3 unless there has been a real contest in which a meaningful  
4 percentage, which shall be at least a majority, of the participants  
5 in ~~such~~ *those* contests have failed to win a prize, money, thing, or  
6 other value.

7 (10) Representing directly or by implication that any particular  
8 person has won any money, prize, thing, or other value without  
9 disclosing the exact nature and approximate value thereof.

10 (11) Using the word “lucky” to describe any number, ticket,  
11 coupon, symbol, or other entry, or representing in any other manner  
12 directly or by implication that any number, ticket, coupon, symbol,  
13 or other entry confers or will confer an advantage upon the recipient  
14 that other recipients will not have, that the recipient is more likely  
15 to win a prize than are others, or that the number, ticket, coupon,  
16 symbol, or other entry has some value that other entries do not  
17 have.

18 (12) Using or offering for use any method intended to be used  
19 by a person interacting with an electronic video monitor to simulate  
20 gambling or play gambling-themed games in a business  
21 establishment that (A) directly or indirectly implements the  
22 predetermination of sweepstakes cash, cash-equivalent prizes, or  
23 other prizes of value, or (B) otherwise connects a sweepstakes  
24 player or participant with sweepstakes cash, cash-equivalent prizes,  
25 or other prizes of value. For the purposes of this paragraph,  
26 “business establishment” means a business that has any financial  
27 interest in the conduct of the sweepstakes or the sale of the products  
28 or services being promoted by the sweepstakes at its physical  
29 location. This paragraph does not make unlawful game promotions  
30 or sweepstakes conducted by for-profit commercial entities on a  
31 limited and occasional basis as an advertising and marketing tool  
32 that are incidental to substantial bona fide sales of consumer  
33 products or services and that are not intended to provide a vehicle  
34 for the establishment of places of ongoing gambling or gaming.

35 (13) Failing to obtain the express written or oral consent of  
36 individuals before their names are used for a promotional purpose  
37 in connection with a mailing to a third person.

38 (14) Using or distributing simulated checks, currency, or any  
39 simulated item of value unless there is clearly and conspicuously  
40 printed thereon the words: SPECIMEN—NONNEGOTIABLE.

1 (15) Representing, directly or by implication, orally or in  
2 writing, that any tie breaker puzzle may be entered upon the  
3 payment of money qualifying the contestant for an extra cash or  
4 any other type prize or prizes unless:

5 (A) It is clearly and conspicuously disclosed that the payments  
6 are optional and that contestants are not required to pay money,  
7 except for reasonable postage and handling fees, to play for an  
8 extra cash or any other type of prize or prizes; and

9 (B) Contestants are clearly and conspicuously given the  
10 opportunity to indicate they wish to enter ~~such~~ *that* phase of the  
11 contest for free, except for reasonable postage and handling fees  
12 the amount of which shall not exceed one dollar and fifty cents  
13 (\$1.50) plus the actual cost of postage and which shall be clearly  
14 and conspicuously disclosed at the time of the initial contest  
15 solicitation and each time thereafter that the payment of ~~such~~ *the*  
16 fees is required. The contestants' opportunity to indicate they wish  
17 to enter for free shall be in immediate conjunction with and in a  
18 like manner as the contestants' opportunity to indicate they wish  
19 to play for an extra prize.

20 (b) For the purposes of this section, "sweepstakes" means a  
21 procedure, activity, or event, for the distribution, donation, or sale  
22 of anything of value by lot, chance, predetermined selection, or  
23 random selection that is not unlawful under other provisions of  
24 law, including, but not limited to, Chapter 9 (commencing with  
25 Section 319) and Chapter 10 (commencing with Section 330) of  
26 Title 9 of Part 1 of the Penal Code.

27 (c) This section does not apply to an advertising plan or program  
28 that is regulated by, and complies with, the requirements of Section  
29 17537.1.

30 (d) Nothing in this section shall be deemed to render lawful any  
31 activity that is unlawful pursuant to other law, including, but not  
32 limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal  
33 Code.

34 (e) Nothing in this section shall be deemed to render unlawful  
35 or restrict otherwise lawful games and methods used by a gambling  
36 enterprise licensed under the Gambling Control Act or operations  
37 of the California State Lottery.

O